

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

NYKAEL RENARD WILLIS, #07885033	§	
VS.	§	CIVIL ACTION NO. 5:05cv93
UNITED STATES OF AMERICA	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On May 10, 2005, Petitioner Nykael Renard Willis, an inmate confined in the federal prison system, filed, pursuant to 28 U.S.C. § 2241, this application for writ of habeas corpus. The motion was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case. The Report recommended construing the petition as a § 2255 motion and dismissing it with prejudice for lack of jurisdiction and dismissing without prejudice regarding all other issues.

In response to the Report, Petitioner filed a motion asking this Court to recharacterize the petition as a 28 U.S.C. § 2255 motion and to transfer the petition to the convicting court because Petitioner has been unable to access his legal work since May 21, 2005. This Court made a *de novo* review of Petitioner's motion.

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought. 28 U.S.C. § 1404. If a district court determines that a petition filed pursuant to 28 U.S.C. § 2241

should be construed as a 28 U.S.C. § 2255 motion, then the court may transfer the case to the convicting court, even if the § 2255 motion is successive. *Day v. Chandler*, 55 Fed. Appx. 716 (5th Cir. 2002).

This Court finds that the Magistrate Judge's findings and conclusions are correct, and adopts them as the Court's findings and conclusions. Considering Petitioner's motion in response to the Report, however, the Court hereby

**ORDERS** that Petitioner's motion (dkt#8) asking this Court to recharacterize the petition as a 28 U.S.C. § 2255 motion and to transfer the petition to the convicting court is **GRANTED**; and

**ORDERS, ADJUDGES, and DECREES** that this action is **TRANSFERRED** to the United States District Court for the Western District of Kentucky, Owenboro Division.

**SIGNED this 6th day of October, 2005.**

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE